

USDOL/OALJ Reporter

[*Lewis v. CH2M Hill Hanford Group*](#), 2003-ERA-4 and 5 (ALJ Dec. 17, 2003)

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 17 December 2003

CONSOLIDATED CASE NO.: 2003-ERA-00004

In the matter of

STEVE LEWIS,
Complainant,

v.

CH2M HILL HANFORD GROUP,
Respondent,

CASE NO.: 2003-ERA-00005

In the matter of

LLOYD STONE,
Complainant,

v.

CH2M HILL HANFORD GROUP,
Respondent,

RECOMMENDED ORDER APPROVING SETTLEMENT
AND DISMISSING EACH CASE

These two consolidated cases arise under the Energy Reorganization Act of 1974, 42 U.S.C. § 5851 ("ERA"); 29 C.F.R. Part 24. On or about December 31, 2002 and January 2, 2002, respectively, Complainants Lloyd Stone, and Steve Lewis, each filed individual complaints with the Department of Labor ("DOL") alleging discrimination and a pattern

of reprisal on the part of Respondent CH2M Hanford Group, Inc. ("Respondent") in violation of the employee protection provisions of the Energy Reorganization Act ("ERA"), the Toxic Substances Control Act ("TSCA"), the Solid Waste Disposal Act ("SWDA"), Section 405 of the Surface Transportation Assistance Act of 1982 ("STAA"), the Clean Air Act ("CAA"), and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") (collectively the "Whistleblower Acts").

By Orders issued in January 2003, hearings were set in these cases for May 9, 2003, and May 5, 2003, respectively. Upon mutual agreement of the parties, an order was issued by me on March 26, 2003 that consolidated these cases and a separate CERCLA case (*Young*) into one and continued the hearing date to September 8, 2003, all parties having waived all statutory and regulatory deadlines for prosecuting the cases.

Prior to the scheduled consolidated trial date, the parties requested that the matter be submitted to a settlement judge at the Office of Administrative Law Judges (OALJ) to conduct settlement discussions. Administrative law judge Richard A. Morgan facilitated a settlement of all issues between the parties which was reduced to a fully executed Settlement Agreement and Release (the Settlement Agreement) submitted to me on December 5, 2003.

The Settlement Agreement provides that each of these two cases be dismissed with prejudice. A December 15, 2003 letter from counsel of Complainants confirms a telephone message from Employer's counsel stating that any condition referenced by paragraph 3(n) of the parties' Settlement Agreement has been fully satisfied and acknowledged by all counsel.

In addition, paragraph 4 of the Settlement Agreement provides that each of the Complainants and their respective spouses, attorneys, and tax/financial advisors will keep the existence and terms of the settlement agreement confidential, with certain specified exceptions. The parties also agreed that Respondent would be harmed and damaged if the confidentiality provision is not adhered to. In the parties' motion for order approving settlement agreement and release, it is stated that the settlement agreement shall be designated and handled as confidential, commercial information pursuant to 29 C.F.R. § 70.26(b).

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Because the OALJ is a government agency, and these cases are public proceedings, the parties' submissions in these cases, including the Settlement Agreement, become a part of the record in these cases and are subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988). FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under FOIA. *Gerald Fish v. H and R Transfer*, ARB No. 01-071; ALJ Case No. 00-STA-56 (ARB April 30, 2003).

The parties have indicated that the Settlement Agreement comprises and includes confidential commercial information which they believe are exempt from disclosure under FOIA. The Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests and for protecting the interests of submitters of confidential commercial information. *See 29 C.F.R. § 70.26*. The settlement in each of these cases will be placed in a separate envelope and identified as being confidential commercial information pursuant to the parties' request.

I have reviewed the Settlement Agreement and find it is a fair, adequate and reasonable settlement of all of the Complainant's claims under the employee protection provisions of the Whistleblower Acts, and I grant the joint motion and approve the Settlement Agreement.

For good cause shown:

IT IS ORDERED that the motion for order approving Settlement Agreement and Release is **GRANTED** in its entirety;

IT IS FURTHER ORDERED that the Settlement Agreement and Release represent a fair, adequate, and reasonable settlement for all parties involved in each of the three separate cases;

IT IS FURTHER ORDERED that the Settlement Agreement is designated and handled as confidential, commercial information pursuant to 29 C.F.R. 70.26(b);

IT IS FURTHER ORDERED that the Settlement Agreement shall have the same force and effect as if an Order had been made after full hearing;

IT IS FURTHER ORDERED that the entire record herein shall be solely based upon the complaint, order of reference and notice of administrative determination, and the Settlement Agreement in each separate case herein;

IT IS FURTHER ORDERED that the parties herein each waives the right to any further procedural steps before me and the right to challenge or contest the validity of the order entered into in accordance with the Settlement Agreement; and

IT IS FURTHER ORDERED that each of these two cases is **DISMISSED** with prejudice.

GERALD M. ETCHINGHAM
Administrative Law Judge

GME/dmr